HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No.4 of 2006

Between:

M. Venkat Prasad …Appellant.

AND

State of Andhra Pradesh rep. by
its Secretary (Mines), Industries & Commerce
(M-II) Department, Secretariat Hyderabad &
others. …Respondents.

:: JUDGMENT ::

Counsel for the Appellant : Mr.B.Adinarayana Rao

Counsel for Respondent Nos.1 to 4 : Government Pleader for Mines & Geology.

Counsel for Respondent No.5 : None appeared.

23rd JANUARY 2006

Per G.S.Singhvi, C.J.

This appeal is directed against order dated 24-10-2005 whereby the learned Single Judge dismissed the writ petition filed by the appellant for quashing orders dated 13-6-2005 and 3-10-2005 passed by the Director of Mines and Geology, Hyderabad and the State Government respectively in the matter of cancellation of quarry lease granted in his favour.

A perusal of the record shows that the applications made by the appellant, respondent No.5 and one Sri Mohd. Jameer for grant of quarry lease for stone and metal in Sy.No.144 of Kazipally village, Jinnaram Mandal, Medak District, were considered by Deputy Director, Mines and Geology, Nizamabad and lease was granted to the appellant vide order dated 22-3-2005. Respondent No.5 challenged the grant made in favour of the appellant by filing an appeal, which was allowed by the Director of Mines and Geology vide his order dated 13-6-2005. The appellate authority remitted the case to the Deputy Director with the direction to re-examine the issue relating to grant of quarry lease keeping in view the interests of the local entrepreneurs and to avoid blocking of the area by a single person without establishing a crusher and also to avoid transfer of the areas to other entrepreneurs. Revision filed by the appellant against the appellate order was dismissed by the State Government.

The appellant challenged the appellate and revisional orders in Writ Petition No.22817 of 2005, but could not persuade the learned Single Judge to nullify the same. The writ petition was dismissed by the learned Single Judge with the observations that the reasons assigned by the appellate authority for cancelling the quarry lease granted to him does not suffer from any legal infirmity and the revisional authority rightly refused to interfere with the appellate order.

Sri B.Adinarayana Rao, learned counsel for the appellant invited our attention to Rule 12 of the A.P. Minor Mineral Concession Rules, 1966 (for short 'the Rules') and argued that the learned Single Judge committed a serious error by refusing to quash the orders passed by the appellate and revisional authorities despite the fact that lease granted in favour of the appellant was cancelled on legally untenable grounds. Learned counsel then argued that the grant was made to the appellant strictly in accordance with Rule 12 of the Rules and the appellate authority gravely erred by cancelling the same on the spacious ground of not giving preference to the local entrepreneurs. Sri Rao emphasised that the application of his client was prior in

point of time and, therefore, he had a prior right to the grant of lease and the Deputy Director concerned did not commit any illegality by entertaining his claim. An alternative argument of the learned counsel is that even if the appellate and revisional authorities felt that the issue relating to grant of quarry lease in respect of the area in question should be re-considered, they could not have directed giving of preference to local entrepreneurs because there is no provision to that effect in Rule 12 of the Rules.

Learned Government Pleader supported the order of the learned Single Judge and submitted that the Division Bench should not interfere with the discretion exercised by the learned Single Judge by refusing to entertain the appellant's challenge to the cancellation of lease.

We have considered the respective submissions and are inclined to approve the view taken by the learned Single Judge that orders dated 13-6-2005 and 3-10-2005 passed by the Director of Mines and Geology and the State Government respectively do not suffer from any legal infirmity warranting interference by this Court under Article 226 of the Constitution of India.

Rule 12 (1) and (2) of the Rules which has bearing on the decision of this appeal read as under:-

> "**12. Grant of lease**:- (1) A quarry lease for any minor mineral except sand and granite useful for cutting and polishing and Marble shall be granted on application subject to the provisions of sub-rules (2) and (3) and each such application for grant of quarry lease shall be accompanied by Treasury or Bank challan for rupees one thousand in token of the remittance towards fees.
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> (2) Whenever more than one application are received for grant of a quarry lease for minor minerals except sand, granite useful for cutting and polishing and Marble and also the minerals specified under items, 1(a) and (b) under Schedule-I to Rule 10 the Deputy Director shall dispose of the applications in order of preference specified below:-

i. Applications of Government Department and Government Corporations and Companies;

ii. Applications of Labour Contract Co-operative Societies;

iii. Applications of unemployed persons who possess any

recognised qualification in Geology, Geophysics, or Mining Engineering or any other allied subjects;

iv. Other applications;

Provided that in cases falling under any of the categories (i) to (iii) above, the grant of lease shall be subject to the condition that lessee shall work the quarry directly and shall not hand it over to any other party for working;

Provided further that the Deputy Director may refuse to accord preference to the application of a Labour Contract Co-operative Society, if he finds that the particular Society does not work properly in the interest of the workers concerned;

Provided also that whenever more than one application falling under any of the categories (i) to (iii) above are received for grant of a quarry lease and have to be considered under the order of preference prescribed above, Deputy Director shall refer matter to Government with his recommendation for a direction;

Provided also that whenever more than one application falling under category (iv) above are received for grant of a quarry lease and have to be considered in the order of preference specified above, such preference shall be given to the applications according to the date of their receipt, unless the Government, for special reasons, otherwise direct and in case of applications received on the same day, the Deputy Director after taking into consideration the particulars furnished in the applications, may grant the lease to any deserving applicant; or he may, with the previous approval of the Director, grant a quarry lease to an applicant whose application was received later in preference to an earlier application for any special reason to be recorded in writing."

An analysis of the provisions reproduced above shows that when more than one applications are made for grant of quarry lease, the competent authority is required to give preference keeping in view the date of the application. However, the preference clause is not couched in absolute terms and in appropriate case, the competent authority can grant lease to a party whose application may not have been received prior in point of time. The use of the expression 'may grant the lease to any deserving applicant' in 4th proviso to Rule 12(2) of the Rules makes it clear that the

competent authority has got ample discretion in the matter of grant of quarry lease and it is not bound to grant lease to the person whose application may be prior in point of time.

If the appellant's case is examined in the light of above analysis of the Rules, we do not find any fault with the approach adopted by the appellate authority in cancelling the grant made in favour of the appellant because it is an undisputed position that the appellant is already holding a quarry lease for four hectares of land in the name of his wife Smt. Swapna and is operating an establishment in the name of M/s. Buildmate. The appellate authority felt that one person should not be allowed to enjoy monopoly in the matter of quarry lease. This is clearly borne out from the following extracts of order dated
13-6-2005:-

> "During the hearing of the case on 21-5-2005 the appellant reiterated the stand and requested to set aside the grant order passed by the DDM &G, Nizamabad stating that Sri Prasad filed a number of applications and already holding a lease in the nameof M/s.Buildmate. ADM&G, Medak admitted that Sri Prasad is holding a Q.L. for 4.00 hects. in the name of his family Smt.Swapna as Proprietor M/s.Buildmate. In addition to the present grant order for 4.50 hects. Sri Prasad is having (2) more Q.L. applications one in the same Survey Number 144 for which inspection and survey completed on 11-5-2005 over an extent of 4.00 hects. Regarding other application it is filed in S.No.181 of Kazipally village. Sri Prasad has withdrawn the application. The appellant also informed that Sri M. Venkata Prasad is having the habit of filing applications in the area and selling the same to other entrepreneurs.
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> In order to obtain further details in the matter, Sri M. Venkata Prasad was intimated to attend hearing on 21-5-2005 as impleaded party. Sri M. Venkat Prasad pleaded that earlier he held a lease for stone metal in Ranga Reddy District, transferred the same to other entrepreneur as the quarry was falling in the banned mandals of Ranga Reddy District. He also informed that he is holding a lease in his wife's name Smt. Swapna and applied areas in his name also and plans to go for establishing a crushing unit.
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> The Asst. Director of Mines & Geology, Medak has reported that the quarry lease held by Sri M.V. Prasad in his wife's name Smt.Swapna, is being worked and supplying spals to existing crusher of Sri Md.Zameer, who also an applicant for the subject area.
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> A perusal of the records produced by the DDM&G, Nizamabad and ADM&G, Medak indicate that the procedure for processing the applications over the same area has not been followed properly. Further, the Dy. Director of Mines

& Geology, Nizamabad erred in processing the combined proposals submitted by Asst. Director of Mines & Geology, Medak for deemed fit action as M.V. Prasad who is holding a lease in his wife's name Smt.Swapna and filed (3) applications in the area. The Dy. Director of Mines & Geology, Nizamabad has not given any opportunity to the appellant before passing separate orders rejecting the application. It is against to the rules. Sri M. Venkata Prasad already holding a lease for 4.00 hects in the name of M/s.Buildmate on his wife's name and seeking leases without either having a crushing unit or any justification for such large extents. The ADM&G, Medak and DDM&G, Nizamabad failed to examine all the aspects and also the interest of local entrepreneurs while processing the applications.

In view of the above and as per the powers conferred under rule 35 of APMMC Rules 1966 the appeal filed by Sri A. Narasimhulu is allowed and consequently the grant proceedings No.5570/QL/04-1 dt.22-3-2005 issued by the DDM&G, Nizamabad is set-a-side. The DDM&G, Nizamabad is directed to re-examine the issue keeping in view the interest of local entrepreneurs and to avoid blocking of the area by a single person without establishing a crusher and also to avoid transfer of the areas to other entrepreneurs."

The revisional authority agreed with the appellate authority and negated the appellant's challenge to order dated 13-6-2005 by recording the following observations:-

"Again, the matter has been examined by Government in detail in consultation with the Director of Mines and Geology, and in order to dispose of the Revision Application filed by Sri M.Venkat Prasad, a hearing was conducted on 9-8-2005. The Revision Authority heard both the parties. After hearing the arguments and after going through the record, it is found that Sri M.Venkat Prasad is having other quarry leases in Sy.No.144 of Kazipally (V), Jinnaram (M), Medak District and a quarry lease in his wife's name, i.e., Smt. Swapna. Sri A. Narasimhulu submits that he does own a single quarry lease anywhere and requests to consider grant of quarry lease to eke out a living. Thus, in that area of Kazipally, Sri M. Venkat Prasad and his family have quarry leases, enjoying monopoly which, it is felt, undesirable from the point of view of livelihood of small local entrepreneurs. The blocking of quarry lease areas to a larger extent by a single family in a particular village, i.e., Kazipally, is also not desirable from the point of view of social harmony. Sri M. Venkat Prasad could not justify possessing of large extent of quarry lease areas as the same extent is not required by him without a crusher, i.e., for captive purpose. In view of this, Government do not find any valid

reason to interfere with the proceedings of the Director of Mines and Geology No.11295/R2-2/05, dated 13-6-2005 and Government having examined the matter with reference to material available on record and submissions made by both parties, and by exercising the powers conferred under Rule 35-A of APMMC Rules, 1966, hereby dismiss the Revision Application filed by Sri M.Venkat Prasad."

It is not in dispute that the appellant has an existing lease in the name of his wife Smt.Swapna. The appellant has also not produced any evidence to controvert the observations made in the appellate order that he had transferred another lease in favour of third party. These factors were totally ignored by the Deputy Director of Mines and Geology while granting quarry lease to the appellant. The Director, Mines and Geology came to the conclusion that failure of the Deputy Director to take into account the factors which had bearing on the issue of grant of lease warranted invalidation of the grant in favour of the appellant. This view was confirmed by the revisional authority. Both the authorities have assigned independent and cogent reasons for cancellation of the lease granted to the appellant.

We entirely agree with the reasons assigned by the concerned authorities and hold that the appellant has failed to make out a case for interference under Article 226 of the Constitution of India. Consequently, the appeal is dismissed.

G.S. SINGHVI, C.J.

23rd January, 2006.

G.BHAVANI PRASAD, J.

ARS / svs